

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 251

HOUSE BILL 2440

AN ACT

AMENDING SECTIONS 23-621, 23-724, 23-726, 23-727, 23-729, 23-730, 23-769, 23-771, 23-773, 23-775, 23-779, 23-787 AND 23-791, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

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May 20, 2004

Honorable Jake Flake
Speaker, Arizona House of Representatives
1700 West Washington
Phoenix, AZ 85007


Re: House Bill 2440: unemployment insurance benefits

Dear Speaker Flake,

Today I signed House Bill 2440 into law. This bill provides a much needed increase in unemployment insurance benefits for Arizonans who are out of work and reflects an appropriate compromise between Arizona's business and labor interests.

I write this letter, however, to address a drafting error in the bill that I understand will be addressed by a future technical corrections bill. I understand that paragraph one (1) of section six (6) of House Bill 2440 accurately reflects the legislature's (and my) intent with respect to this bill and that paragraph four (4) of section six (6) is in error with respect to Positive Reserve Ratios of 13% or more. Until corrected, the Executive Branch will implement House Bill 2440 in accordance with the operative provisions of paragraph one (1) of section six (6) with respect to Positive Reserve Ratios of 13% or more.

Yours very truly,


Janet Napolitano
Governor

cc: Hon. Ken Bennett
Hon. Phil Hanson
Hon. Carolyn Allen

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-621, Arizona Revised Statutes, is amended to
3 read:

4 23-621. Unemployed

5 A. An individual shall be deemed "unemployed" with respect to any week
6 during which the individual performs no services and with respect to which
7 no wages are payable to the individual, or with respect to any week of less
8 than full-time work without any fault on the individual's part if the wages
9 payable to the individual with respect to the week are less than the
10 individual's weekly benefit amount.

11 B. AN INDIVIDUAL SHALL NOT BE DEEMED "UNEMPLOYED" WITH RESPECT TO ANY
12 WEEK OF LESS THAN FULL-TIME WORK IF THE LOSS OF FULL-TIME WORK IS DIRECTLY
13 ATTRIBUTABLE TO THE FAULT OF THE INDIVIDUAL.

14 C. AN INDIVIDUAL SHALL NOT BE DEEMED "UNEMPLOYED" IF THE INDIVIDUAL
15 IS RECEIVING WAGES IN LIEU OF NOTICE, DISMISSAL PAY OR SEVERANCE PAY. THE
16 PERIOD OF TIME FOR WHICH WAGES IN LIEU OF NOTICE, DISMISSAL PAY OR SEVERANCE
17 PAY ARE ALLOCABLE SHALL BE DETERMINED BY EITHER OF THE FOLLOWING:

18 1. IF THERE WAS A WRITTEN CONTRACT BETWEEN THE EMPLOYER AND THE
19 CLAIMANT IN EFFECT AT THE TIME OF SEPARATION, ALLOCATE TO THE APPROPRIATE
20 PERIOD IN ACCORDANCE WITH THE CONTRACT, CONTINUING FOR THE NUMBER OF WORK
21 DAYS THAT THE PAY WOULD COVER AT THE REGULAR WAGE RATE.

22 2. IF NO WRITTEN CONTRACT WAS IN EFFECT AT THE TIME OF SEPARATION,
23 ALLOCATE TO THE APPROPRIATE PERIOD FOLLOWING THE LAST DAY OF PERFORMANCE OF
24 SERVICES, CONTINUING FOR THE NUMBER OF WORK DAYS THAT THE PAY WOULD COVER AT
25 THE REGULAR WAGE RATE.

26 Sec. 2. Section 23-724, Arizona Revised Statutes, is amended to read:

27 23-724. Liability determinations; review; finality

28 A. When the department makes a determination, which determination
29 shall be made either on the motion of the department or upon application of
30 an employing unit, that an employing unit constitutes an employer as defined
31 in section 23-613 or that services performed for or in connection with the
32 business of an employing unit constitute employment as defined in section
33 23-615 which is not exempt under section 23-617 or that remuneration for
34 services constitutes wages as defined in section 23-622, the determination
35 shall become final with respect to the employing unit fifteen days after
36 written notice is served personally or by certified mail addressed to the
37 last known address of the employing unit, unless within such time the
38 employing unit files a written request for reconsideration.

39 B. When a request for reconsideration is filed as prescribed in
40 subsection A of this section, a reconsidered determination shall be made. The
41 reconsidered determination shall become final with respect to the employing
42 unit thirty days after written notice thereof is served personally or by
43 certified mail addressed to the last known address of the employing unit,
44 unless within such time the employing unit files with the appeals board a
45 written petition for hearing or review. ~~All contribution and wage reports~~

1 ~~asserted by the department to be due on or before the date the petition for~~
2 ~~review is filed including any individuals and amounts in dispute shall be~~
3 ~~submitted substantially complete, as prescribed by department regulation,~~
4 ~~prior to the expiration of the thirty day period, if the employer is to be~~
5 ~~afforded an opportunity for hearing. The department may for good cause~~
6 ~~extend the period within which the written petition and reports are IS to be~~
7 ~~submitted. Submission of the required reports shall under no circumstances~~
8 ~~constitute an admission that such reports were due or should have been~~
9 ~~filed. IF THE RECONSIDERED DETERMINATION IS APPEALED TO THE APPEALS BOARD~~
10 ~~AND THE DECISION BY THE APPEALS BOARD IS THAT THE EMPLOYING UNIT IS LIABLE,~~
11 ~~THE EMPLOYING UNIT SHALL SUBMIT ALL REQUIRED CONTRIBUTION AND WAGE REPORTS~~
12 ~~TO THE DEPARTMENT WITHIN FORTY-FIVE DAYS AFTER THE DECISION BY THE APPEALS~~
13 ~~BOARD.~~

14 C. On an employer's written request and the submission of pertinent
15 information to the department, the department shall, or on its own motion
16 may, ~~in its discretion~~ consider whether a determination, reconsidered
17 determination or decision which has become final should be revised. Revision
18 shall be granted if either:

19 1. There has been a substantial and material change in the facts on
20 which the determination, reconsidered determination or decision relied.

21 2. There has been a change in the law or interpretation of the law
22 which warrants a revised determination, reconsidered determination or
23 decision.

24 D. The effective date of a revision under subsection C of this section
25 is either:

26 1. The date on which the change occurred if the employer's request
27 with the pertinent information is filed no later than the last day of the
28 month immediately subsequent to the calendar quarter in which the change
29 occurred.

30 2. The first day of the calendar quarter in which the employer files
31 the request and submits the pertinent information unless the employer
32 demonstrates to the satisfaction of the department that good cause exists for
33 the failure to notify the department within the period prescribed by
34 paragraph 1 of this subsection of the occurrence of the change warranting the
35 revision. In the event such good cause is demonstrated, the effective date
36 shall be the date of the change.

37 E. A refusal to grant relief under subsection C of this section may
38 not be appealed unless within fifteen days the employer appeals the refusal
39 to the appeals board. Notwithstanding any other provision of law and
40 pursuant to such an appeal, the appeals board may initiate hearings to obtain
41 information and issue a decision as to whether the relief requested in
42 subsection C of this section should be granted. Thereafter, the appeals
43 board shall issue a decision in the matter. The decision may not be appealed
44 with respect to the employing unit unless petition for review and request for

1 review are filed within the time and in the manner provided in section
2 23-672.

3 F. The determination of the department or decision of the appeals
4 board, together with the record, shall be admissible in any subsequent
5 judicial proceeding involving liability for contributions. A determination
6 or decision that an employing unit is liable which has become final shall be
7 conclusive and binding upon the employing unit and shall not be reconsidered
8 in proceedings brought before the department or a hearing officer.

9 G. Any reconsidered determination issued pursuant to subsection B of
10 this section and any contribution rate redetermination or denial issued
11 pursuant to section 23-732, subsection A shall contain the following:

12 1. The facts considered and the facts relied on in making the
13 determination.

14 2. The specific statutes, regulations or other authority relied on in
15 making the determination.

16 3. The reasoning applied in making the determination.

17 4. The appeal rights related to the determination and the time period
18 after which the determination becomes final.

19 H. Where IF any determination covered by subsection G of this section
20 is defective because it fails to meet the requirements of subsection G of
21 this section, the defect may be cured by issuance of a corrected, amended or
22 new determination. If a defect is alleged and specified in writing within
23 the period for appeal, all time periods applicable to the determination are
24 suspended pending the curative action.

25 I. This section does not preclude the department from at any time
26 correcting clerical errors that have occurred in the administration of this
27 chapter.

28 Sec. 3. Section 23-726, Arizona Revised Statutes, is amended to read:
29 23-726. Contributions; voluntary payment

30 A. Contributions shall accrue and become payable by each employer for
31 each calendar year in which he THE EMPLOYER is subject to this chapter with
32 respect to wages for employment. The contributions shall become due and be
33 paid by each employer to the commission for the fund in accordance with such
34 regulations as the commission prescribes, and shall not be deducted, in whole
35 or in part, from the wages of individuals in the employer's employ.

36 B. In the payment of contributions, a fractional part of a cent shall
37 be disregarded unless it amounts to one-half cent or more in which case it
38 shall be increased to one cent. FROM AND AFTER DECEMBER 31, 2004, THE
39 PAYMENT OF CONTRIBUTIONS OR JOB TRAINING EMPLOYER TAXES IS NOT REQUIRED IF
40 THE QUARTERLY AMOUNT OF THE CONTRIBUTIONS AND TAXES IS LESS THAN TEN DOLLARS.

41 C. An employer may make voluntary payments in addition to the
42 contributions required under this chapter, which THAT shall be credited to
43 his THE EMPLOYER'S account in accordance with commission regulation. The
44 voluntary payments shall be included in the employer's account as of the
45 employer's most recent computation date if they are made on or before the

1 following January 31. Voluntary payments when accepted from an employer will
2 not be refunded in whole or in part.

3 Sec. 4. Section 23-727, Arizona Revised Statutes, is amended to read:

4 23-727. Credits and charges to employer accounts

5 A. The commission shall maintain a separate account for each employer
6 and shall credit the account with all contributions and payments in lieu of
7 contributions paid by the employer and shall charge the account with all
8 benefits chargeable to it.

9 B. Nothing in this chapter shall be construed to grant any employer
10 or individuals in his ITS service prior claims or rights to the amounts paid
11 by the employer into the fund.

12 C. Except as otherwise provided in subsections D, E, F, and G OF THIS
13 SECTION and sections 23-773 and 23-777, benefits paid to an individual shall
14 be charged against the accounts of his THE INDIVIDUAL'S base-period
15 employers. The amount of benefits so chargeable against each base-period
16 employer's account shall bear the same ratio to the total benefits paid to
17 an individual as the base-period wages paid to the individual by the employer
18 bear to the total amount of base-period wages paid to the individual by all
19 his THE INDIVIDUAL'S base-period employers.

20 D. Benefits paid to an individual whose separation from work with any
21 employer occurs under conditions found by the commission to be within the
22 provisions of paragraph 1 or 2 of THOSE PRESCRIBED BY section 23-775,
23 PARAGRAPH 1 OR 2 or for compelling personal reasons not attributable to the
24 employer and not warranting disqualification for benefits; shall not be used
25 as a factor in determining the future contribution rate of the employer from
26 whose employment the individual so separated, but the employer shall
27 establish the condition of such separation to the satisfaction of the
28 commission by submitting such information as the commission requires within
29 ten days after the date of notification or mailing of notice by the
30 commission that the individual has first filed a claim for benefits.

31 E. Benefits paid to an individual who, during his base-period THE
32 INDIVIDUAL'S BASE PERIOD, earned wages for part-time employment with an
33 employer shall not be used as a factor in determining the future contribution
34 rate of such THAT employer if he THE EMPLOYER continues to give employment
35 OPPORTUNITIES to the individual to the same extent while he is receiving
36 benefits as during the base period and the employer establishes such fact by
37 submitting such SUBMITS information as the commission may require within ten
38 WORKING days after the date of notification or mailing of notice by the
39 commission that the individual has first filed a claim for benefits. THE
40 COMMISSION HAS THE BURDEN OF PROOF TO ESTABLISH THAT THE EMPLOYER FAILED TO
41 GIVE EMPLOYMENT OPPORTUNITIES TO THE INDIVIDUAL TO THE SAME EXTENT AS DURING
42 THE BASE PERIOD.

1 F. Benefits paid to an individual and whose employment was terminated
2 by retirement pursuant to a nongovernmental retirement or ~~lump-sum~~ LUMP SUM
3 retirement pay plan under which the age of mandatory retirement has been
4 agreed upon between the employer and his ITS employees or by the bargaining
5 agent representing such employees, shall not be used as a factor in
6 determining the future contribution rate of such THAT employer but the
7 employer shall establish such THAT fact by submitting such information as the
8 commission may require within ten days after the date of notification or
9 mailing of notice by the commission that the individual has first filed a
10 claim for benefits.

11 G. Benefits paid pursuant to the ~~provisions of~~ section 23-771,
12 ~~subsection~~ SUBSECTIONS B AND D shall not be used as a factor in determining
13 the future contribution rate of the affected base-period employers.

14 H. A determination that benefits paid shall be used in determining
15 future contribution rates of the employer may be appealed by the employer in
16 the same manner provided for appeals of benefit determinations.

17 Sec. 5. Section 23-729, Arizona Revised Statutes, is amended to read:

18 23-729. Change from the standard contribution rate

19 If an employer's account has been chargeable with benefits throughout
20 the twelve consecutive calendar month period ending on June 30 of the
21 preceding calendar year, the employer shall have a rate computed in
22 accordance with section 23-730. If the employer's account has not been
23 chargeable with benefits for that twelve month period, the employer shall pay
24 contributions at the reduced rate of two and ~~seven-tenths~~ per cent.

25 Sec. 6. Section 23-730, Arizona Revised Statutes, is amended to read:

26 23-730. Variation and adjustment of contribution rates

27 For calendar year 1985 and each calendar year thereafter, variations
28 from the standard rate of contribution shall be determined in accordance with
29 the following requirements:

30 1. If the total of all an employer's contributions, paid on or before
31 July 31 of the preceding calendar year with respect to wages paid by the
32 employer prior to July 1 of such THE preceding calendar year, equals or
33 exceeds the total benefits which THAT were chargeable to the employer's
34 account and were paid prior to July 1 of such THE preceding calendar year,
35 with respect to weeks of unemployment beginning prior to such July 1, the
36 employer's contribution rate for the ensuing calendar year subject to the
37 adjustments provided by this section shall be determined from the employer's
38 positive reserve ratio in accordance with the table provided in this
39 paragraph. An employer's positive reserve ratio is the percentage resulting
40 from dividing the employer's reserve surplus, which is the excess of
41 contributions paid over benefits charged by the employer's average annual
42 taxable payroll. If an employer's reserve equals zero, the employer's
43 contribution rate for the ensuing calendar year shall be two and seven-tenths
44 per cent, subject to the adjustments provided by this section.

<u>Positive Reserve Ratio</u>	<u>Contribution Rate</u>
Less than 3%	2.60%
At least 3% but less than 4%	2.40%
At least 4% but less than 5%	2.15%
At least 5% but less than 6%	1.90%
At least 6% but less than 7%	1.65%
At least 7% but less than 8%	1.40%
At least 8% but less than 9%	1.15%
At least 9% but less than 10%	0.90%
At least 10% but less than 11%	0.65%
At least 11% but less than 12%	0.40%
At least 12% but less than 13%	0.15%
13% or more	0.05% 0.02%

2. If the total of all an employer's contributions, paid on or before July 31 of the preceding calendar year with respect to wages paid by the employer prior to July 1 of such THE preceding calendar year, is less than the total benefits which THAT were chargeable to the employer's account and were paid prior to July 1 of such THE preceding calendar year, with respect to weeks of unemployment beginning prior to such July 1, the employer's contribution rate for the ensuing calendar year shall be determined from the employer's negative reserve ratio in accordance with the tables TABLE provided in this paragraph, subject to the rate adjustment provided in paragraph 3 of this section, except that the rate is subject to increases but not to reduction. An employer's negative reserve ratio is the percentage resulting from dividing the employer's reserve deficit, which is the excess of benefits charged over contributions paid, by the employer's average annual taxable payroll. The table applicable to rate computation for calendar year 1987 and each calendar year thereafter is:

<u>Negative Reserve Ratio</u>	<u>Contribution Rate</u>
Less than 3%	2.85%
At least 3% but less than 4%	3.05%
At least 4% but less than 5%	3.30%
At least 5% but less than 6%	3.55%
At least 6% but less than 7%	3.80%
At least 7% but less than 8%	4.05%
At least 8% but less than 9%	4.30%
At least 9% but less than 10%	4.55%
At least 10% but less than 11%	4.80%
At least 11% but less than 12%	5.05%
At least 12% but less than 13%	5.30%
13% or more	5.40%

3. The ratio of the total assets of the fund on July 31 as defined by department regulation to the total taxable payrolls for the twelve-month TWELVE MONTH period immediately preceding the computation date shall

determine the required income rate for the ensuing calendar year in accordance with the following fund control schedule:

<u>Fund Ratio</u>	<u>Required Income Rate</u>
12.0% or more	0.40%
At least 10.0% but less than 12.0%	0.50%
At least 9.5% but less than 10.0%	0.60%
At least 9.0% but less than 9.5%	0.70%
At least 8.5% but less than 9.0%	0.80%
At least 8.0% but less than 8.5%	0.90%
At least 7.5% but less than 8.0%	1.00%
At least 7.0% but less than 7.5%	1.10%
At least 6.5% but less than 7.0%	1.20%
At least 6.0% but less than 6.5%	1.30%
At least 5.5% but less than 6.0%	1.40%
At least 5.0% but less than 5.5%	1.50%
At least 4.5% but less than 5.0%	1.70%
At least 4.0% but less than 4.5%	1.80%
At least 3.5% but less than 4.0%	2.00%
At least 3.0% but less than 3.5%	2.20%
Less than 3.0%	2.40%

For each calendar year the department shall compute the estimated required tax yield from employers which THAT is the product of the total taxable payrolls for the ~~twelve-month~~ TWELVE MONTH period immediately preceding the computation date and the applicable required income rate from the fund control schedule less the interest earned on monies in the fund during the ~~twelve-month~~ TWELVE MONTH period immediately preceding the computation date and credited to the fund by the United States treasury on or before October 31 following the computation date. Except as otherwise provided by statute, the rates in paragraphs 1 and 2 of ~~this section~~ shall be adjusted proportionately if the estimated required tax yield from employers exceeds or is less than the estimated yield from the rates without adjustment.

4. In computing an employer's adjusted rate as provided by paragraph 3 of ~~this section~~, such THE adjusted rate shall be calculated to the nearest ~~one-hundredths~~ ONE-HUNDREDTH per cent UNLESS THE EMPLOYER HAS A POSITIVE RESERVE RATIO OF THIRTEEN PER CENT OR MORE. IF THE EMPLOYER HAS A POSITIVE RESERVE RATIO OF THIRTEEN PER CENT OR MORE, THE EMPLOYER'S ADJUSTED RATE SHALL BE CALCULATED TO THE NEAREST ONE-THOUSANDTH PER CENT. An employer's adjusted rate shall not be less than ~~five-hundredths~~ TWENTY-FIVE THOUSANDTHS per cent.

Sec. 7. Section 23-769, Arizona Revised Statutes, is amended to read:

23-769. Job training employer tax

A. Beginning on January 1, 2001, a tax equal to one-tenth of one per cent of taxable wages as provided and defined in section 23-622 and that are paid to an employee each year is imposed on each employer in this state except employers described in subsection B or C of this section.

1 B. Subsection A of this section does not apply to employers who have
2 elected to become liable for payment in lieu of contributions pursuant to
3 section 23-750.

4 C. Until the amount of the excise tax imposed pursuant to 26 United
5 States Code section 3301 is reduced to six per cent or less, subsection A of
6 this section does not apply to employers:

7 1. With a positive reserve ratio of at least thirteen per cent
8 pursuant to section 23-730.

9 2. With a positive reserve ratio of at least twelve per cent but less
10 than thirteen per cent.

11 3. That are assigned the contribution rate of two ~~and seven-tenths~~ per
12 cent pursuant to ~~sections~~ SECTION 23-729 or TWO AND SEVEN-TENTHS PER CENT
13 PURSUANT TO SECTION 23-730.

14 4. With a negative reserve ratio pursuant to section 23-730.

15 D. The department of economic security shall collect this tax on a
16 quarterly basis and shall deposit, pursuant to sections 35-146 and 35-147,
17 the monies collected pursuant to this section in the Arizona job training
18 fund established by section 41-1544. Monies collected pursuant to this
19 section shall not be commingled in any manner with monies collected pursuant
20 to articles 4, 5 and 5.1 of this chapter.

21 E. FROM AND AFTER DECEMBER 31, 2004, THE PAYMENT OF CONTRIBUTIONS OR
22 JOB TRAINING EMPLOYER TAXES IS NOT REQUIRED IF THE QUARTERLY AMOUNT OF THE
23 CONTRIBUTIONS AND TAXES IS LESS THAN TEN DOLLARS.

24 Sec. 8. Section 23-771, Arizona Revised Statutes, is amended to read:
25 23-771. Eligibility for benefits

26 A. An unemployed individual shall be eligible to receive benefits with
27 respect to any week only if the department finds that the individual:

28 1. Has registered for work at and thereafter has continued to report
29 at an employment office in accordance with such regulations as the department
30 prescribes.

31 2. Has made a claim for benefits in accordance with ~~the provisions of~~
32 section 23-772.

33 3. Is able to work.

34 4. Is available for work.

35 5. Has been unemployed for a waiting period of one week. ~~No~~ A week
36 shall NOT be counted as a week of unemployment for the purpose of this
37 paragraph:

38 (a) Unless it occurs within the benefit year ~~which~~ THAT includes the
39 week with respect to which the individual claims payment of benefits.

40 (b) Unless the individual was eligible for benefits with respect
41 thereto as provided in this section and sections 23-775 through 23-777.

42 (c) If benefits have been paid in respect thereto.

43 6. Has met one of the following requirements:

44 (a) Has been paid wages for insured work during the individual's base
45 period equal to at least one and one-half times the wages paid to the

1 individual in the calendar quarter of the individual's base period in which
2 such wages were highest, and the individual has been paid wages for insured
3 work in one calendar quarter of the individual's base period equal to at
4 least one thousand FIVE HUNDRED dollars.

5 (b) Has for a benefit year beginning on or after September 2, 1984,
6 been paid wages for insured work during at least two quarters of the
7 individual's base period and the amount of such wages paid in one quarter
8 would be sufficient to qualify the individual for the maximum weekly benefit
9 amount payable under this chapter and the total of the individual's base
10 period BASE-PERIOD wages is equal to or greater than the taxable limit as
11 specified in section 23-622, subsection B, paragraph 1.

12 7. Following the beginning date of a benefit year established under
13 this chapter or the unemployment compensation law of any other state and
14 prior to the effective date of a subsequent benefit year under this chapter,
15 has performed services whether or not in employment as defined in section
16 23-615 for which wages were payable in an amount equal to or in excess of
17 eight times the weekly benefit amount for which the individual is otherwise
18 qualified under section 23-779. In making a determination under this
19 paragraph the department shall use information available in its records or
20 require the individual to furnish necessary information within thirty days
21 from the date notice is given that such information is required.

22 B. If an unemployed individual cannot establish a benefit year as
23 defined in section 23-609 due to receipt during the base period of
24 compensation for a temporary total disability pursuant to chapter 6 of this
25 title, or any similar federal law, the individual's base period shall be the
26 first four of the last five completed calendar quarters immediately preceding
27 the first day of the calendar week in which the disability began. Wages
28 previously used to establish a benefit year may not be reused. This
29 subsection does not apply unless all of the following occur:

30 1. The individual has filed a claim for benefits not later than the
31 fourth calendar week of unemployment after the end of the period of
32 disability.

33 2. The claim is filed within two years after the period of disability
34 begins.

35 3. The individual meets the requirements of subsection A of this
36 section.

37 4. The individual has attempted to return to the employment where the
38 temporary total disability occurred.

39 C. If an unemployed individual is a member of the national guard or
40 other reserve component of the United States armed forces, he THE INDIVIDUAL
41 shall not be considered to be either employed or unavailable for work by
42 reason of his participating THE INDIVIDUAL'S PARTICIPATION in drill, training
43 or other national guard or reserve activity which THAT occurs on not more
44 than one weekend per month or in lieu of a weekend drill or the equivalent.

1 D. THE DEPARTMENT SHALL NOT DISQUALIFY AN INDIVIDUAL FROM RECEIVING
2 BENEFITS UNDER THIS CHAPTER ON THE BASIS OF THE INDIVIDUAL'S SEPARATION FROM
3 EMPLOYMENT IF THE INDIVIDUAL IS A VICTIM OF DOMESTIC VIOLENCE AND LEAVES
4 EMPLOYMENT DUE TO A DOCUMENTED CASE OF A DOMESTIC VIOLENCE OFFENSE AS DEFINED
5 IN SECTION 13-3601 OR 13-3601.02. BENEFITS PAID TO AN INDIVIDUAL PURSUANT
6 TO THIS SUBSECTION SHALL NOT BE CHARGED AGAINST AN EMPLOYER'S ACCOUNT
7 PURSUANT TO SECTION 23-727, SUBSECTION G.

8 ~~D.~~ E. For the purposes of subsection A, paragraph 6, of this
9 section, wages shall be counted as "wages for insured work" for benefit
10 purposes with respect to any benefit year only if such THAT benefit year
11 begins subsequent to the date on which the employing unit by which such THOSE
12 wages were paid has become an employer subject to this chapter.

13 Sec. 9. Section 23-773, Arizona Revised Statutes, is amended to read:

14 23-773. Examination and determination of claims

15 A. A representative designated by the department as a deputy shall
16 promptly examine any claim for benefits and, on the basis of the facts found
17 by him THE DEPUTY, shall determine whether or not the claim is valid. If the
18 claim is valid, the deputy shall also determine the week with respect to
19 which the benefit year shall commence, the weekly benefit amount payable and
20 the maximum duration thereof OF THE BENEFIT.

21 B. The deputy shall promptly notify the claimant and any other
22 interested parties of the determination and the reasons for the
23 determination. Except as provided in subsection D of this section, unless
24 the claimant or an interested party, within seven calendar days after the
25 delivery of notification, or within fifteen calendar days after notification
26 was mailed to his THE CLAIMANT'S OR INTERESTED PARTY'S last known address,
27 files an appeal from the determination, it shall become final, and benefits
28 shall be paid or denied in accordance with the determination. If an appeal
29 tribunal affirms a determination of the deputy allowing benefits, or the
30 appeals board affirms a determination or decision allowing benefits, such THE
31 benefits shall be paid regardless of any appeal which THAT may thereafter be
32 taken, but if such THAT decision is finally reversed, no employer's account
33 shall be charged with benefits so paid.

34 C. Upon receipt of a request from an interested party for information
35 about a deputy's determination made pursuant to this section or section
36 23-673, the department shall make available by memorandum or other written
37 document within five days after receipt of the request the following
38 information:

39 1. The facts considered and the facts relied on in making the
40 determination.

41 2. The specific statutes, regulations or other authority relied on in
42 making the determination.

43 3. The reasoning applied in making the determination.

44 D. Before the time for appeal as prescribed in subsection B of this
45 section has expired, an interested party may request a reconsidered

determination. The department shall examine the request and, within seven calendar days, deny the request or issue a reconsidered determination. IF THE DEPARTMENT DENIES THE REQUEST BASED ON AN ALLEGED FAILURE OF THE INTERESTED PARTY TO MAKE A TIMELY RESPONSE BUT THE INTERESTED PARTY SUBSEQUENTLY PROVES THAT THE RESPONSE WAS TIMELY FILED AND RECEIVED BY THE DEPARTMENT, THE DEPARTMENT SHALL REPORT THAT RESULT TO THE JOINT LEGISLATIVE BUDGET COMMITTEE. THE INTERESTED PARTY MAY PROVE THAT A RESPONSE WAS TIMELY FILED BY USING EVIDENCE OF FAX RECORDS THAT DOCUMENTS THE DATE AND TIME WHEN A FAXED RESPONSE WAS TRANSMITTED AND RECEIVED BY THE DEPARTMENT. A request for reconsideration which THAT is denied shall be treated as an appeal, and the same procedure shall be followed as provided for in case of appeal from the original determination. If a reconsidered determination is issued, the time for appeal shall run from the date of issuance of the reconsidered determination. The employer and the claimant shall each be permitted no more than one request for reconsideration on each case.

E. Before the actual filing of an appeal under subsection B of this section, but not later than the time permitted to appeal, the department on its own motion may issue a reconsidered determination. After the time for appeal has expired, but within one year after the issuance of the original determination, the department with authorization of the unemployment insurance program administrator may issue a reconsidered determination, on the basis of newly discovered evidence which THAT by due diligence could not have been previously discovered, if no administrative or judicial review has occurred or is pending on the original determination. If a redetermination is based on fraud, the one year limitation on the issuance of redeterminations does not apply.

F. Prompt notice in writing of any reconsidered determination under subsection E of this section and the reasons for reconsideration shall be given to all interested parties. An interested party may appeal within the time prescribed under subsection B of this section, and the same procedure shall be followed as provided for in case of an appeal from the original determination.

Sec. 10. Section 23-775, Arizona Revised Statutes, is amended to read:

23-775. Disqualification from benefits

An individual shall be disqualified for benefits:

1. For the week in which he THE INDIVIDUAL has left work voluntarily without good cause in connection with the employment, and in addition to the waiting week, for the duration of his THE INDIVIDUAL'S unemployment and until he THE INDIVIDUAL has earned wages in an amount equivalent to five times his THE INDIVIDUAL'S weekly benefit amount otherwise payable. If a person leaves because of transportation difficulties, he THE INDIVIDUAL shall be disqualified unless he THE INDIVIDUAL can show his THE INDIVIDUAL'S travel requirements are in excess of the normal practice in his THE INDIVIDUAL'S occupation and his past practice or that he THE INDIVIDUAL has compelling personal circumstances requiring his THE INDIVIDUAL'S leaving. Compelling

1 personal circumstances shall include but are not limited to a showing of any
2 of the following:

3 (a) Over thirty miles distance from his THE INDIVIDUAL'S home to his
4 work.

5 (b) More than one and one-half hours to reach work.

6 2. For the week in which he THE INDIVIDUAL has been discharged for
7 wilful or negligent misconduct connected with the employment, and in addition
8 to the waiting week, for the duration of his THE INDIVIDUAL'S unemployment
9 and until he THE INDIVIDUAL has earned wages in an amount equivalent to five
10 times his THE INDIVIDUAL'S weekly benefit amount otherwise payable.

11 3. For any week with respect to which or a part of which he THE
12 INDIVIDUAL has received or is seeking unemployment benefits under an
13 unemployment compensation law of another state or of the United States, but
14 if the appropriate agency of such THE other state or of the United States
15 finally determines that he THE INDIVIDUAL is not entitled to such
16 unemployment benefits, such THE ineligibility shall not apply.

17 4. For the week in which he THE INDIVIDUAL becomes unemployed and for
18 not more than the following three weeks, if his THE INDIVIDUAL'S unemployment
19 is due solely to a customary suspension of all operations, except maintenance
20 work, at the factory, plant or other premises at which he THE INDIVIDUAL was
21 last employed, which will not occur more than once in a calendar year and
22 will not exceed four consecutive weeks' duration, and that his THE employment
23 will again be available to him upon THE INDIVIDUAL ON resumption of
24 operations. For THE purposes of this paragraph:

25 (a) "Customary suspension" means a suspension which THAT has occurred
26 for the same or similar reasons in each of three consecutive years or more,
27 including the year in question, regardless of whether the suspension in any
28 previous year would have satisfied the requirements of this paragraph. A
29 suspension provided for by an agreement to which the employer is a party
30 shall be considered customary unless the agreement specifies the exact time,
31 duration, type and circumstances of the suspension. Any suspension whose
32 details are determined by the employer shall be considered customary,
33 regardless of the employer's ultimate reason for imposing it, as long as the
34 employer's reason or reasons are the same or similar over the necessary
35 period.

36 (b) "Factory, plant or other premises" means any location or premises
37 or portion of locations or premises of the employer where the work or
38 operations are separate and distinct from those at other locations or
39 premises or portions of locations or premises, regardless of geographic
40 proximity or functional, geographic or administrative integration of the work
41 or operations.

42 (c) "Maintenance work" has its usual meaning and includes any
43 administrative, executive, clerical or supervisory work or any other work
44 necessary to keep the factory, plant or other premises in a position to

1 resume full operations promptly at the end of the suspension or necessary to
2 pay, supervise or otherwise support individuals performing such work.

3 5. FOR ANY WEEK IN WHICH THE INDIVIDUAL IS INCARCERATED.

4 Sec. 11. Section 23-779, Arizona Revised Statutes, is amended to read:

5 23-779. Amount of benefits

6 A. The weekly benefit amount of an individual shall be an amount equal
7 to one twenty-fifth of the person's total wages for insured work paid during
8 that quarter of the person's base period in which such total wages were
9 highest, but if:

10 ~~1. From and after June 30, 1998, and before July 1, 1999, this amount~~
11 ~~is more than one hundred ninety-five dollars, the weekly benefit amount shall~~
12 ~~be one hundred ninety-five dollars.~~

13 ~~2. 1. From and after June 30, 1999 AND BEFORE JULY 1, 2004, this~~
14 ~~amount is more than two hundred five dollars, the weekly benefit amount shall~~
15 ~~be two hundred five dollars.~~

16 2. FROM AND AFTER JUNE 30, 2004, THIS AMOUNT IS MORE THAN TWO HUNDRED
17 FORTY DOLLARS, THE WEEKLY BENEFIT AMOUNT SHALL BE TWO HUNDRED FORTY DOLLARS.

18 B. If the weekly benefit amount is less than the maximum weekly
19 benefit prescribed in subsection A and is not a multiple of one dollar such,
20 THE amount shall be rounded to the nearest dollar, with an even one-half
21 dollar being rounded to the next higher multiple of one dollar. An
22 individual's benefit amount shall not be redetermined during the person's
23 benefit year because of a new maximum or minimum weekly benefit amount
24 becoming effective during the person's benefit year.

25 C. Each eligible individual unemployed with respect to any week shall
26 be paid with respect to such THAT week a benefit in an amount equal to the
27 person's weekly benefit amount less that part of the wages, if any, payable
28 to the person with respect to such THAT week which is in excess of thirty
29 dollars. The benefit, if not a multiple of one dollar, shall be rounded to
30 the nearest dollar, with an even one-half dollar being rounded to the next
31 higher multiple of one dollar.

32 Sec. 12. Section 23-787, Arizona Revised Statutes, is amended to read:

33 23-787. Repayment of and deductions for benefits obtained by
34 claimants not entitled to benefits; collection

35 A. A person who receives any amount as benefits under this chapter to
36 which he THE PERSON is not entitled is liable to repay the overpaid amount
37 to the department. The department may deduct all or a portion of the
38 overpayment from future benefits payable to the person under this chapter.

39 B. If benefits to which a person is not entitled are received by
40 reason of fraud as determined by the department, the person is not eligible
41 to receive any benefits under this chapter until the total amount of the
42 overpayment has been recovered or otherwise satisfied in compliance with a
43 civil judgment.

44 C. If benefits to which a person is not entitled are received without
45 any fault on his THE PERSON'S part and if repayment or deduction from future

1 ~~benefits would either defeat the purpose of this chapter or be against equity~~
2 and good conscience, the department may waive all or a portion of the amount
3 overpaid.

4 D. If benefits to which a person is not entitled are received without
5 any fault on his THE PERSON'S part, deductions made by the department
6 pursuant to subsection A from benefits payable to an individual for any week
7 shall not exceed twenty-five per cent of the individual's weekly benefit
8 amount unless required by federal law, except that the amount recouped from
9 benefits payable may be fifty per cent of the weekly benefit amount if the
10 individual has previously received benefits but has not received benefits for
11 at least twelve consecutive months prior to the most recent receipt of
12 benefits and there has been no reasonable attempt to repay the indebtedness
13 during that period. The fifty per cent recoupment rate may not be put in
14 effect prior to one year after the establishment of the overpayment.

15 E. The department shall adopt rules to implement the provisions of
16 subsection D.

17 F. The attorney general or the appropriate county attorney may
18 institute appropriate court proceedings to recover in the name of the
19 department any amount for which a person is liable to the department.

20 Sec. 13. Section 23-791, Arizona Revised Statutes, is amended to read:

21 23-791. Benefits reduced by pension payment; definition

22 A. Except as provided in subsection SUBSECTIONS B AND C, the amount
23 of benefits payable to an individual for any week which THAT begins in a
24 period with respect to which the individual is receiving or will receive a
25 pension under a plan maintained or contributed to by a base-period employer
26 of the individual shall be reduced by EITHER:

27 1. The amount of such THE pension which THAT is reasonably
28 attributable to such THE week if the individual contributed less than
29 forty-five per cent of the amount for the pension. ; or

30 2. Forty-five per cent of the amount of such THE pension which THAT
31 is reasonably attributable to such THE week if the individual contributed at
32 least forty-five per cent but less than one hundred per cent of the amount
33 for the pension.

34 B. The amount of benefits payable to an individual for any week shall
35 not be reduced by reason of the receipt of a pension if the services
36 performed during the base period by the individual for the base-period
37 employer or remuneration received for such THOSE services did not affect the
38 individual's eligibility for nor increase the amount of such THE
39 pension. The conditions specified by this subsection do not apply to
40 pensions paid under the social security act or the railroad retirement act
41 of 1974 or the corresponding provisions of prior law. Pensions paid under
42 such THOSE acts shall be treated in the manner specified by subsection A.

43 C. BENEFITS SHALL NOT BE REDUCED BY THE RECEIPT OF SOCIAL SECURITY
44 RETIREMENT IN ORDER TO TAKE INTO ACCOUNT CONTRIBUTIONS MADE BY THE INDIVIDUAL
45 FOR THE PENSION.

1 ~~C.~~ D. ~~In this~~ FOR THE PURPOSES OF THIS section, "pension" means a
2 governmental or other pension, retirement or retired pay, annuity or other
3 similar periodic payment which THAT is based on the previous work of the
4 individual.

5 Sec. 14. Retroactivity

6 Section 23-779, Arizona Revised Statutes, as amended by this act,
7 applies retroactively to from and after June 30, 2004.

8 Sec. 15. Effective date

9 Sections 23-621 and 23-729, Arizona Revised Statutes, as amended by
10 this act, are effective from and after December 31, 2004.

11 Sec. 16. Applicability

12 The allocation process set forth in section 23-621, subsection C,
13 Arizona Revised Statutes, as amended by this act, does not apply to wages,
14 dismissal pay or severance pay paid to an individual in accordance with an
15 employment contract entered into before January 1, 2005.

APPROVED BY THE GOVERNOR MAY 20, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2004.

Passed the House March 10, 2004

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Norman L. Fyfe
Chief Clerk of the House

Passed the Senate May 5, 2004

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

Klu Blumett
President of the Senate

Chaima Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at 4:21 o'clock _____ M.

Secretary of State

H.B. 2440

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 17, 2004,

by the following vote: 47 Ayes,

7 Nays, 6 Not Voting

Jake Flake
Speaker of the House
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17th day of May, 2004

at 1:46 o'clock P. M.

Jennifer Upbarra
Secretary to the Governor

Approved this 20 day of

May, 2004,

at 2³⁰ o'clock P. M.

Jt. Noyth
Governor of Arizona

H.B. 2440

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2004,

at 4:21 o'clock P. M.

James F. Deener
Secretary of State